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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,193	09/26/2001	Brian Gitt	021237-000100US	2809
28778	7590	06/03/2004	EXAMINER	
JOHNSON & STAINBROOK, LLP 3558 ROUND BARN BLVD., SUITE 203 SANTA ROSA, CA 95403				BEISNER, WILLIAM H
ART UNIT		PAPER NUMBER		
		1744		

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

EF

Office Action Summary	Application No.	Applicant(s)	
	09/965,193	GITT, BRIAN	
	Examiner	Art Unit	
	William H. Beisner	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 March 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10, 14-16, 19, 20, 22 and 29 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 1-10, 14-16, 19 and 20 is/are allowed.
 6) Claim(s) 22 and 29 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claim 22 and 29 is withdrawn in view of the newly discovered reference(s) to Pannell (US 4,273,495); Kopf (EP 472771) and Komagome et al.(JP 10-236218). Rejections based on the newly cited reference(s) follow.
2. Claims 1-10, 14-19, 19 and 20 are allowed.
3. The following is a statement of reasons for the indication of allowable subject matter:
The above claims are allowable over the prior art of record for the same reasons as set forth in section 15 of the Office action dated 30 Sept. 2003.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
 1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeLillo (US 5,441,552) in view of Redpath (US 3,438,677) and Donchery (FR 2594434).

The reference of DeLillo discloses that it is known in the art to transfer material to be composted within a transfer container in the form of a dump truck (See Figure 9). The material to be composted is dispensed by tilting the container of the truck.

Claim 22 differs by reciting that the container is vibrated while the material is dispensed.

The reference of Redpath discloses that it is known in the art to provide a dump truck box with a vibrating device so as to aid in removal of the material from the box (See column 1, lines 34-62).

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the box of the transfer device of the primary reference with a vibrating device for the known and expected result of providing a means recognized in the art for aiding the removal of material from the transfer container while in a tilted position.

While the transfer step disclosed in the reference of DeLillo encompasses transfer of compostable material within a tray or drawer of the composting system, Claim 22 differs further by reciting that the dispensing step includes dispensing the compostable material in drawer within a plurality of stacked drawers in a composting apparatus.

The reference of Donchery discloses that composting devices that include a plurality of stacked trays or drawers are known in the art (See the Figures and English language abstract).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to fill the trays or drawers of the reference of Donchery using a dump truck as suggested by the references of DeLillo and Redpath for the known and expected result of providing an art recognized means for filling composting trays.

7. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Donchery (FR 2594434) in view of Kopf (EP 472771) or Komagome et al.(JP 10-236213).

The reference of Donchery discloses composting system that includes a plurality of stacked trays or drawers (See Figure 1).

Claim 29 differs by reciting that the composting system of trays or drawers is positioned within a shipping container.

The references of Kopf and Komagome et al. both disclose that it is conventional in the art to provide composting system components within shipping containers (See the English language abstracts).

In view of either of these teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the composting system of the primary reference of Donchery within a shipping container for the known and expected result of allowing the material to be composted to be collected at one site and transported and/or stored at another site while maintained within a desired composting system. Note it is well established that a claimed device that is portable or movable is not sufficient by itself to patentably distinguish over an otherwise old device unless there are new or unexpected results (See *In re Lindberg*, 194 F.2d 732, 93 USPQ 23 (CCPA 1952)).

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William H. Beisner
Primary Examiner
Art Unit 1744

WHB